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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,106	12/27/2000	Cary Lee Bates	ROC920000234US1	6268
46797 7590 02/02/2011 IBM CORPORATION, INTELLECTUAL PROPERTY LAW DEPT 917, BLDG. 006-1 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829				
EXAMINER SCHNURR, JOHN R				
ART UNIT		PAPER NUMBER		
2421				
MAIL DATE		DELIVERY MODE		
02/02/2011		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARY LEE BATES and PAUL REUBEN DAY

Appeal 2009-014016
Application 09/749,106
Technology Center 2400

Before MAHSHID D. SAADAT, MARC S. HOFF, and
CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claim 5. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants' claimed invention is a method for pricing programming events viewed by multiple viewers (Spec. 1:6-8).

Independent claim 5, reproduced below, is the only claim on appeal.

5. A method for determining a price of a program transmitted by a programming provider to subscribers, comprising:

receiving, via a network connection, a purchase order for a program from a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program, and wherein the programming provider maintains a plurality of subscriber groups, wherein each group includes a subset of subscribers and wherein members of each subscriber group are determined prior to an offer to purchase the program;

offering, to a first subscriber group of the plurality of subscriber groups, the program to purchase at a predetermined price;

determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the first subscriber group; and

determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the first subscriber group, wherein the threshold number of subscribers belonging to the first subscriber group purchasing the program is all the subscribers of the first subscriber group.

The Examiner rejected claim 5 under 35 U.S.C. § 103(a) based upon the teachings of and Bonomi (US 6,769,127 B1), Sartain (US 5,914,712), and Pallakoff (US 6,269,343 B1).

The Examiner finds Bonomi does not teach or suggest a list of subscribers including a plurality of subscriber groups and that each group includes a subset of subscribers and members are determined prior to an offer to purchase (Ans. 4). The Examiner then finds Sartain discloses this feature and states it would be obvious to modify Bonomi accordingly (Ans. 4). The Examiner also finds Pallakoff discloses determining a price based upon a threshold number of purchasers (Ans. 5).

Appellants contend Bonomi cannot be combined with Sartain and that Bonomi teaches away from such a modification (App. Br. 11; Reply Br. 4). That is, Appellants note that Bonomi “caters to individuals” and Sartain “caters to groups” (App. Br. 11; Reply Br. 4). Appellants also contend Bonomi teaches away from such combination (App. Br. 11; Reply Br. 4).

The Examiner “concedes that . . . updating a list of subscribers in Bonomi is not clearly improved by the subscriber grouping of Sartain,” but Sartain allows each headend to contain only content specific to each group, thus providing a more effective way to distribute content (Ans. 7).

As asserted by Appellants, Bonomi teaches providing on-demand broadcasts, which are not scheduled, but rather, are real-time requests. Further, we agree with Appellants that Bonomi’s content delivery model is for individuals and not groups. The Examiner has provided no explanation for the assertion Bonomi can be modified by Sartain for providing customized services. Bonomi already provides this advantage by seeking to

achieve a higher level of granularity for customizing an individual users' service of a common subscriber account. (App. Br.11; Reply Br. 4-5)

DECISION

The Examiner's decision rejecting claim 5 is reversed.

REVERSED

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